



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY, :  
AND MUNICIPAL EMPLOYEES :

Complainant :

v. :

CITY OF CONCORD :

Respondent :

CASE NO. A-0432:4

DECISION NO. 83-29

#### APPEARANCES

Representing AFSCME

Edward Edwards

Representing the City of Concord

Paul Cavanaugh

#### BACKGROUND

The American Federation of State, County, and Municipal Employees, Local 1580 filed a petition for modification of a unit with the PELRB on April 29, 1982. In the petition Local 1580 requests the reinstatement of some 24 positions that were separated from the unit by order of this Board in November 1981.

The union contends that the president of the local, Mr. Harvey Russell, acted without the knowledge and consent of the local in agreeing with the City of Concord to modify the bargaining unit of Local 1580. The union further contends that these actions only recently came to their notice and that it is contrary to their constitution and they request that the Board order that the mutual agreement between the union and the City of Concord of October 28, 1981 be declared invalid and that the 24 employees be returned to the unit.

The City of Concord objects to the modification petition on the grounds that the current composition of bargaining unit was established by the Board on November 3, 1981 as a result of a petition initiated and filed by the AFSCME Local 1580 to which the City of Concord agreed. The October 27, 1981 agreement between the City of Concord and Local 1580 was signed by the then president of that local, no member of the Local 1580 or any of its officers or any officers of the AFSCME state council #68 filed any objection during the 15 day filing period nor has any objection been filed since; discussions of the petition of 1981 were held with AFSCME Council #68 indicating that they were well aware of the modification of the unit. The City of Concord, in fact, delayed the implementation of the order until the latter part of December 1981 in order to allow the council ample time to object if they wished to and no such objection was filed. The City of Concord further objects on the grounds that no employee in any of the listed positions has requested the modification of the bargaining unit so as to include these positions and further that the petition for modification filed by AFSCME Local 1580 in October 1981 recognized that the listed positions were inappropriate for inclusion in the bargaining unit and further that there have been no changes in the circumstances

surrounding the formation of this bargaining unit since the Board's order of November 3, 1981, which would justify a modification of the composition of the bargaining unit established by that order, and that the City would be harmed in that it had done what the Board ordered it to do at some expense to the City.

The city of Concord also filed an amendment to its objection to the modification petition by adding twenty-three (23) signed statements by the people holding the current positions, indicating that they did not wish to be part of AFSCME's Local 1580, or to be included in the bargaining unit.

A hearing was held on this matter at the PELRB office in Concord on May 17, 1983.

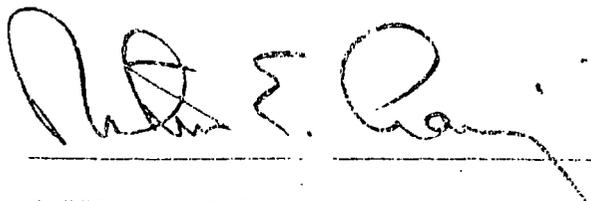
FINDINGS OF FACT AND RULINGS OF LAW

At the hearing, argument was heard indicating that this was merely an attempt on the part of the Union to file an objection to the 1981 change and was, therefore, untimely. The Union testified that insofar as the timeliness issue was concerned, they had recently been put under the care of an administrator, which as they explained, is a kind of receivership and that this was the earliest time that Council 68 could act on this particular problem and, also that they were concerned that future such decisions of this Board would be affected by this particular decision.

It also became clear at the hearing, as in the modification petition itself, that this was a problem with the leadership of the Local, acting apparently without the authority of the other officers and members, and that this violated the internal constitution of the AFSCME union. The City argued that this was not a problem for this Board to resolve on the grounds that internal union difficulties were up to them to resolve. The City further argued that since the Board had already determined the appropriate bargaining unit in its November 1981 order, unless there were changed circumstances, the Board should not change the bargaining unit. The only change in circumstances that were testified to were the problems of the AFSCME Local and its State Council in terms of its administration and its new direction.

BOARD DECISION

Lacking any changing circumstances following its November 3, 1981 order, PELRB finds that the modification is not agreed to and, therefore, the petition is hereby dismissed.



ROBERT E. CRAIG, Chairman

Signed this 8th day of July, 1983

By unanimous vote. Chairman Craig presiding, members Seymour Osman and Russell Verney present and voting. Also present, Executive Director, Evelyn C. LeBrun